IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5837 of 1988

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADMINISTRATIVE OFFICER

Versus

USHABEN M THAKAR

Appearance:

MR HS MUNSHAW for Petitioner

MR GIRISH PATEL for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 06/12/2001

ORAL JUDGEMENT

1 . Heard the learned counsel for the respective

parties.

2. This is an old petition of the year 1988 which has been taken up for final hearing today. The first respondent has not filed any affidavit in reply to the petition till today. Under the circumstances the facts which have been stated on oath in the petition, to the extent they are corroborated by the facts narrated in the impugned judgement and award of the Labour Court, require to be accepted.

3. This is a petition professed to be filed under Article 226 and 227 of the Constitution of India, though in fact and substance it is one under Article 227 of the Constitution of India, inasmuch as the petition seeks to challenge the judgement and award passed by the Labour Court, Nadiad, in Reference (LN) 1106/93, passed under section 10(1)(c) of the Industrial Disputes Act, 1947.

4. The basic facts which are not disputed and/or indisputable are as under:

4.1 The first respondent was employed by the petitioner as a daily wager. Her services were terminated by an order dated 30th June 1983. However, the said order was implemented on 7th July 1983. It is this termination order which was the subject matter of reference before the Labour Court in the aforesaid Reference. Even a careful perusal of the impugned judgement and award fails to disclose any other cause of action and/or any other grievance except this particular termination. It only requires to be noted that the award refers to the termination by two dates viz. 30th June 1983 and 7th July 1983. This is not an inconsistency nor an error on the part of the Labour Court once it is appreciated that the order of removal was in fact dated 30th June 1983, which order came to be implemented on 7th July 1983.

5. Therefore, for the purpose of present petition it is necessary to retain the focus on precisely what the grievance of the second respondent was before the Labour Court, and precisely what was the controversy before the Labour Court. As aforesaid, it was only this specific termination which was in controversy before the Labour Court.

6. The Labour Court allowed the Reference by directing reinstatement of the first respondent with continuity of service, together with backwages on and from 9th June 1984. At this stage it is relevant to note

that the said Reference was decided by the judgement and award dated 9th June 1988.

7. As against this factual background, the petition sworn on oath discloses that the impugned termination order which was the subject matter of Reference before the Labour Curt, was voluntarily quashed and set aside by the petitioner itself by passing another order No.5414 dated 6th August 1983, and that the said order treated her as in continuous service.

8. After the said reinstatement order was passed, certain events took place with which we are not concerned so far as the present petition is concerned, inasmuch as the impugned award cannot and does not deal with such subsequent events. In fact the subsequent events have led the first respondent to file another reference viz. Reference No.66/85, and which was pending before the Labour Court, Nadiad till the date of swearing of the present petition viz. 25th August 1988.

9. Thus, the grievance made by the petitioner before the Labour Court that she was terminated by the order dated 30th June 1983, which order was given effect to on 7th July 1983, was a grievance which was already redressed by the petitioner by taking her back in service and treating her tenure as in continuous service.

10. As noted hereinabove, subsequent developments which again resulted in termination of the services of the first respodnent is the subject matter of another Reference referred to hereinabove.

11. Thus, the Labour Court had no reason to interfere on these facts, particularly by the judgement and award passed as late as 9th June 1988, inasmuch as the first respondent had been reinstated as early as 6th August 1983.

12. In the premises aforesaid, this petition requires to be allowed and the impugned award requires to be quashed and set aside. It is so directed accordingly. Consequently rule is made absolute with no order as to costs.Interim relief stands vacated.

13. It is clarified that in case the first respondent has obtained any benefits under the impugned award, or under interim orders passed in the present petition, the same shall be adjusted against the benefits which may accrue in her favour in the second reference, provided the first respondent succeeds in the second reference.

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